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FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

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JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE PHENYLPROPANOLAMINE (PPA) PRODUCTS LIABILITY LITIGATION

George Brooks, et al. v. Bayer Corp., et al., N.D. Mississippi, C.A. No. 4:03-290

Jonell Whitehorn v. Chattem, Inc., et al., E.D. Missouri, C.A. No. 4:03-1494

BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, BRUCE M. SELYA, D. LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR., AND KATHRYN H. VRATIL, JUDGES OF THE PANEL

TRANSFER ORDER

Before the Panel are motions brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiffs in one Northern District of Mississippi action and one Eastern District of Missouri action. Movants seek to vacate Panel orders conditionally transferring their respective actions to the Western District of Washington for inclusion in the centralized pretrial proceedings occurring there in this docket before Judge Barbara Jacobs Rothstein. Bayer Corp., which is a defendant in the Mississippi action, supports transfer of that action; and Chattem, Inc., which is a defendant in the Missouri action, supports transfer of that action.

On the basis of the papers filed and hearing session held, the Panel finds that these two actions involve common questions of fact with actions in this litigation previously transferred to the Western District of Washington, and that transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel is persuaded that transfer of the actions is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. The Panel held that the Western District of Washington was a proper Section 1407 forum for actions brought by persons allegedly injured by products containing Phenylpropanolamine (PPA) – a substance which, until it became the subject of a November 2000 public health advisory issued by the Food and Drug Administration, was used as an ingredient in many nasal decongestants and weight control products. *See In re Phenylpropanolamine (PPA) Products Liability Litigation*, 173 F.Supp.2d 1377 (J.P.M.L. 2001).

Opponents of transfer premise much of their opposition to transfer on their argument that jurisdiction is lacking in their actions. They urge the Panel not to order transfer before motions to remand to state court are resolved by the appropriate transferor court. We note that such motions, if not resolved in transferor courts by the time of Section 1407 transfer, can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential*

Insurance Company of America Sales Practices Litigation, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these two actions are transferred to the Western District of Washington and, with the consent of that court, assigned to the Honorable Barbara Jacobs Rothstein for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman